

Before the
Federal Communications Commission
Washington, D.C. 20554

2000 DEC 22 P 1:51

In the Matter of

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Amendment of Section 73.202(b),

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MM Docket No. 99-352

Table of Allotments,

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RM-9786

FM Broadcast Stations.

)

(Gaviota, California)

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FILED

REPORT AND ORDER

(Proceeding Terminated)

Adopted: December 13, 2000

Released: December 22, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making ("Notice") issued herein, 14 FCC Rcd 21330 (1999), issued in response to a request filed by Brian Costello ("petitioner"), proposing the allotment of Channel 266A to Gaviota, California, as that locality's first local aural transmission service. Petitioner and Lazer Broadcasting Corp. each filed supporting comments in response to the Notice. Opposing comments were filed on behalf of Stratosphere Broadcasting Limited Partnership ("Stratosphere").¹ Petitioner and Stratosphere each filed reply comments.

2. As stated in the Notice, petitioner described Gaviota (pop. 70),² as an unincorporated, rural California coastal community, located along U.S. Highway 101. Petitioner advised that Gaviota has its own school and fire districts, ranching activity, a large petroleum and water desalinization plants, and the Gaviota State Park. Additionally, petitioner advised that the Santa Inez mountains north of Gaviota creates terrain shadowing for the area, resulting in weak or nonexistent FM radio reception service to approximately 10,000 commuters traversing U.S. Highway 101 from outlying communities to the concentrated business environment of Santa Barbara. According to petitioner, the requested allotment of Channel 266A would provide a reliable, unobstructed service to Gaviota as well as to the Coastal shelf and offer essential communication services to motorists traveling in that area. The Notice invited comments regarding the attributes of Gaviota for allotment purposes, and requested the petitioner to provide proof of site availability to accommodate the requested allotment.

3. In support of its assertion that Gaviota is a community for allotment purposes, petitioner claims that although it is unincorporated, the County of Santa Barbara mentions Gaviota in its "Guide to Santa Barbara County" publication, and therefore provides evidence that Gaviota is a distinct community. Further, petitioner reports that although Gaviota no longer has its own post office, it is still listed in the current zip code directory as allocated for a post office and has been included in one of

¹ Stratosphere is the licensee of Station KSTT-FM, Channel 267B, Los Osos-Baywood Park, California.

² Population figure was taken from the 2000 Rand McNally Commercial Atlas and Marketing Guide.

the "Super Zip Codes" of 93117, which includes the community of Goleta, a suburb of Santa Barbara, as well as 50 miles of coastline to the west of Goleta, including Gaviota.

4. Although police and fire services are provided to Gaviota by the County of Santa Barbara, petitioner advises that a volunteer fire department is operated by the residents of Hollister Ranch, a large private development in Gaviota, containing 50 families. Moreover, petitioner reports that the residents of Hollister Ranch have a Ranch Owners Association which performs as a quasi-governmental body for the private development. Additionally, petitioner reports that Gaviota has its own school, the Vista De Las Cruces School, for grades kindergarten through 8th grade, with a current enrollment of 130 students. Community events at the school are organized by the Vista Volunteer parent organization.

5. As to the commercial activity in Gaviota, petitioner lists fifteen businesses which it states include Gaviota as their mailing address. Also, petitioner reports that the Chevron Gaviota facility employs at least 100 persons from surrounding communities in its large oil refinery. It is also reported that the GTE telephone book lists Gaviota as a separate community for telephone service. With regard to the latter, petitioner states that another example of Gaviota's qualifications as a community are derived from an Order issued by the California Public Utilities Commission requiring GTE to provide toll free service from Gaviota to locations within Santa Barbara, based upon petitions filed by over 100 residents of Gaviota. Petitioner interprets this activity as providing evidence of the view that Gaviota's citizens think of themselves as residents of a community around which their interests area united.

6. Although Gaviota does not have its own local government, petitioner advises that the Commission has recognized that such deficiency is not critical if there are other indicia of a community present, citing Kenansville, Florida, 10 FCC Rcd 9831 (1995), and cases cited therein. Petitioner believes that the existence of a volunteer fire department, coupled with a strong community participation in the local school district, and a variety of local businesses in Gaviota offer evidence to support its assertion that Gaviota qualifies as a community for allotment purposes.³

7. As to site availability to accommodate proposed Channel 266A at Gaviota, petitioner provided evidence that it has leased property for the proposed Gaviota allotment site that is located .5 kilometers from the coordinates specified for Channel 266A in the Notice. Petitioner alleges that from the leased site the requirements of § 73.315 of the Commission's Rules will be met.

8. In opposition comments, Stratosphere urges that the petitioner has not met his burden of demonstrating that Gaviota possess characteristics of a community such as social, economic or cultural indicia to qualify as such for allotment purposes. Further, Stratosphere asserts that Gaviota's mere location is not an indicator of community status. Moreover, Stratosphere urges that Gaviota not only has but a few services or facilities, but that the petitioner did not show their nexus to that location. Additionally, Stratosphere provided a Declaration of DeWayne Holmdahl, formerly a member of the

³ In support, petitioner cites Cal-Nev-Ari, Boulder City and Las Vegas, Nevada, 14 FCC Rcd 17153 (1999) and Essex, California, *supra*.

Board of Supervisors of Santa Barbara County and whose district included Gaviota, setting forth information about Gaviota. According to Mr. Holmdahl, Gaviota is a residential area comprised of 30-40 homes, most of which are connected with the privately-owned, gated Hollister Ranch development. Further, we are advised that Gaviota does not have its own public library, post office, local government, elected officials, hospital, municipal services, school system, or community organizations. Additionally, Mr. Holmdahl reports that while there is a firehouse in Gaviota, it is maintained by Santa Barbara County. Moreover, we are informed that the Vista Del Mar Union School District, comprised of the Vista de Las Cruces School for grades K-8, located in Gaviota, also serves other areas of Santa Barbara County, as well. High school students attend school in neighboring towns, including Santa Ynez and Goleta. Mr. Holmdahl also advises that the oil refinery credited at Gaviota is actually located in Las Cruces and does not serve Gaviota. Additionally, we are advised that there are no commercial establishments located at the Gaviota exit from U.S. Highway 101. In fact, Mr. Holmdahl asserts that the only commercial activity at Gaviota is a fishing tackle rental store and boat launch located at the pier, and that those entities do not identify themselves with Gaviota or serve the needs of its residents. Moreover, it is reported that the Gaviota State Park and public beach area are operated and maintained by the State of California for the use of visitors from throughout California and adjoining states, and are not intended to serve only the needs of Gaviota. Mr. Holmdahl also advises that public services to Gaviota are provided by Santa Barbara County, and that a majority of the residents of Gaviota shop in either Santa Barbara, Goleta, Buellton, Lompoc, and other nearby communities for essential needs and services.

9. In reply comments, petitioner reiterates that Gaviota is more than a geographical location. In support, petitioner refers to the fifteen business entities it credits with local mailing addresses. Additionally, petitioner reports that the Vista de Las Cruces School in Gaviota has an active parent organization. Although the County of Santa Barbara provides police and fire services to Gaviota, petitioner advises that the residents of Gaviota maintain their own volunteer fire department. Moreover, petitioner advises that Gaviota is listed in the Santa Barbara telephone book with a separate exchange. Additionally, petitioner alleges that the quasi-governmental role of the Hollister Ranch Owners Association reflects that organization functions as a local government on such issues as land use restrictions and public utilities access. Also, petitioner urges that the California PUC directive requiring toll free exchange service to Santa Barbara is evidence of community type organization and identity-based activities to distinguish that Gaviota is a *bona fide* community for allotment purposes. While the Gaviota post office is no longer operative, petitioner claims that its listing in the U.S. Zip Code and Post Office Directory as a "place name" signifies that the postal service continues to credit Gaviota as a community with defined boundaries. Petitioner also relies on two U.S. Department of Transportation highway signs indicating the exit for Gaviota lends further credence to the fact that Gaviota is not just a geographical location.

10. Petitioner also disputes Stratosphere's reliance on Grants and Peralta, New Mexico (DA 99-2841, December 17, 1999), to support its claim that a community must run its own schools and have its own police and fire departments to qualify for allotment purposes. Rather, petitioner claims that those factors are not a rigid requirement, citing Semora, North Carolina, 5 FCC Rcd 938 ¶8 (1990), and Cal-Nev-Ari, Boulder City and Las Vegas, Nevada, 14 FCC Rcd 17153 (1999). As to

Stratosphere's argument that the businesses and park lands attributed to Gaviota do not serve its residents, but instead are destinations for persons residing elsewhere, petitioner refers to Kenansville, Florida, 10 FCC Rcd 9831 (1995) (evidence establishing that persons residing outside of the community involving themselves in that community's activities serves as evidence that the community is viewed as a center for business activities for the surrounding area). Further, petitioner claims that Gaviota, like Essex, California, 4 FCC Rcd 8084 (1989), although located in a sparsely populated area, has a need for local transmission service. While the quantity of businesses and attractions in Gaviota are limited, petitioner asserts that it should not be prohibited from receiving an allotment based on that factor as the Commission has never established a minimum level of commercial activity necessary to qualify an area as a community for allotment purposes, citing Semora, North Carolina, *supra*. Petitioner concludes that the proposed allotment would provide a first local aural transmission service to Gaviota and provide a means of supplying essential local emergency and weather related information to approximately 31,000 persons daily traversing Highway 101.

11. Stratosphere's responsive comments reiterate that Gaviota's location depicted on national maps is insufficient to qualify it as a community for allotment purposes, citing Crestview and Westbay, Florida, 7 FCC Rcd 3059 (1992). Further, Stratosphere avers that Gaviota's population of 70 persons is dominated by the Hollister Ranch, a private housing development, whose zoning provisions are administered by Santa Barbara County. Moreover, Stratosphere avers that the inhabitants of Hollister Ranch acknowledge that they obtain basic services and necessities from communities outside of Gaviota.

12. Further, Stratosphere asserts that the absence of a post office at Gaviota for the past twelve years, coupled with a lack of any evidence of an effort or need to rebuild such a facility there, are further indicators of that locality's lack of community status for allotment purposes. Stratosphere maintains that petitioner has not provided evidence of any organizations such as a Chamber of Commerce or Lions Club to indicate there is a connection between political, social and commercial organizations and Gaviota. Rather, Stratosphere claims that the petitioner has relied on the Hollister Ranch's volunteer fire department to strengthen its claim of community status, but failed to establish its connection to Gaviota as opposed to the private Hollister Ranch. Additionally, Stratosphere remarks that the Vista de Las Cruces School does not serve Gaviota exclusively, but rather encompasses the entire Vista De Mar Union School District. Therefore, Stratosphere claims that Vista Volunteer parent organization serves the larger school district as opposed solely to Gaviota.

13. As to the business attributed to Gaviota, Stratosphere reports that the majority are located in nearby Goleta, located 23 road miles from Gaviota, one is no longer in business, and one located in Buellton. Moreover, Stratosphere advises that the Vista Del Mar Union School District and Hollister Ranch Owners Association Gate House are not commercial establishments and are not tied directly to Gaviota. In fact, Stratosphere asserts that the petitioner has not listed any businesses that generally provide the necessities of a community such as a listing for a grocery, drug or clothing store.

Rather, Stratosphere avers that the Gaviota area relies on nearby towns for basic local services (*i.e.*, doctors, hospital services and schools). As a result, Stratosphere claims that the Gaviota area is economically dependent on other nearby towns and does not itself have sufficient economic indicia to qualify as a community.

14. Stratosphere concludes that, as demonstrated, Gaviota does not have its own postal facility, public library, municipal services, hospital, local government, or elected officials, and that Santa Barbara County maintains the firehouse and provides most services to the area. Additionally, Stratosphere advises that as the vast majority of complainants that successfully petitioned the California PUC for toll-free telephone service to locations within the Santa Barbara exchange were comprised of Hollister Ranch residents, that does not evidence that the Ranch's physical location in the Gaviota area transforms Gaviota into a community.

15. After a careful review of the facts and arguments presented by the parties, we conclude that the proposal cannot succeed in accordance with Commission precedent and policy. As Gaviota is not listed in the U.S. Census, we are unable to determine an official population count for that location. Moreover, neither does the petitioner's reliance on the existence of the activities attributed to the residents of the privately owned Hollister Ranch,⁴ including its volunteer fire department, and Ranch Owners Association, evidence cohesiveness among Goleta's populace. Additionally, the County of Santa Barbara provides sewer, street lighting and redevelopment services to Gaviota, as it does to other unincorporated areas of the County. Other County services provided to unincorporated area population include school districts, water, and sanitation. Also, we note that of the fifteen businesses petitioner credits with Gaviota locations, our independent internet search reveals that an overwhelming majority of those listings are attributed to Goleta, one is located in nearby Buellton, California, and that none contain a Goleta mailing address, including the Gaviota Beach Store and the Hollister Ranch Owners Association Gate House. See <http://www.worldpages.com> and <http://www.yahoo.jp.com>. Therefore, it cannot be evidenced that those entities have a nexus with Gaviota. Commission policy is to reject assertions of community status where a nexus has not been demonstrated between the political, social and commercial organizations and the community in question. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991), and cases cited therein. Likewise the residents of the privately owned Hollister Ranch development acknowledge that they shop in Buellton, approximately 12 miles from the Ranch, or in Santa Barbara, for essential needs and services. Although Gaviota is designated as a Place by the U.S. Postal service all mail service to that locality is received through Goleta. Nor did petitioner provide a telephone directory, or excerpts thereof, to reflect the street addresses of Gaviota residents. Also, petitioner did not provide sufficient evidence that Gaviota residents consider themselves as residents of a community around which their interests coalesce. See Mighty-Mac Broadcasting Co., 58 RR 2d 599, 603 (1985); North Naples, Florida, 41

⁴ Our independent research on the Internet reveals that the Hollister Ranch, is comprised of a private, gated 14,000 acre working cattle ranch, containing 133 one hundred acre or larger parcels, located approximately 35 minutes up the coast from Santa Barbara, off U.S. 101. Further, Hollister Ranch is surrounded by the Pacific Ocean, Gaviota State Park and other large private ranches. The Hollister Ranch Owners' Association strive to maintain the natural beauty and integrity of the 340 acre beach recreational area fronting Hollister Ranch. Additionally, Hollister Ranch is described as, in effect, a wildlife preserve. See <http://www.hollister-ranch.com>.

RR 2d 1549, 1551 (1977). The petition signed largely by residents of the Hollister Ranch seeking to obtain toll-free telephone service from Gaviota to locations within Santa Barbara is not representative of Gaviota as a whole. As noted in the petitioner's comments, the Hollister Ranch Owners Association acts as a quasi-governmental body for that private development, while Santa Barbara County administers zoning within the Hollister Ranch. Nor has it been demonstrated that the Vista De Las Cruces School serves Gaviota only, as opposed to the entire Vista Del Mar Union School District.

16. Additionally, petitioner has not shown other indicia of community status in Gaviota such as a city hall, local government, municipal services, library, newspaper, financial institutions or civic organizations such as a Lions Club or Rotary, or civic organizations such as a Chamber of Commerce. We also note that while the instant petition would provide a first local aural service to Gaviota, it would also provide primary service to less than 50% of the Santa Barbara urbanized area which has five commercial FM stations. Therefore, although Gaviota is somewhat isolated, and contains a minimal population, it will be served by FM stations in Santa Barbara. Therefore Gaviota cannot be considered in the same context as an isolated community concerned with survival issues. See Cal-Nev-Ari, Boulder City, and Las Vegas, Nevada, 14 FCC Rcd 17153 (1999).

17. We conclude that based on the information presented, petitioner has failed to satisfy his obligation to provide the Commission with sufficient evidence to establish that Gaviota possesses ample indicia of a community sufficient to reach a determination that it is a community for allotment purposes. See Stock Island, Florida, 8 FCC Rcd 343 (1993).

18. In view of the above, IT IS ORDERED, That the petition for rule making filed on behalf of Brian Costello to allot Channel 266A to Gaviota, California (RM-9786), IS DENIED.

19. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

20. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**